

**Fair Political Practices Commission**  
**MEMORANDUM**

**To:** Chairman Getman, Commissioners Downey, Knox, and Swanson  
**From:** Lawrence T. Woodlock, Senior Commission Counsel  
Luisa Menchaca, General Counsel

**Subject:** Emergency Adoption of Regulation 18225.8;  
Defining Expenditures Coordinated With Committees, or  
Made at the Behest of Committees, not Controlled by a Candidate.

**Date:** August 23, 2002

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**Introduction**

The Commission has before it elsewhere on the agenda repeal and adoption of regulation 18225.7, relating to coordinated expenditures. The existing version of regulation 18225.7 describes expenditures “made at the behest” of both candidates *and* “committees,” as follows:

- (a) “Made at the behest of” means made under the control or at the direction of, in cooperation, consultation, coordination, or concert with, at the request of suggestion of, or with the prior consent of. Such arrangement must occur prior to the making of a communication described in Government Code Section 82031.
- (b) An expenditure is presumed to be made at the behest of a candidate or committee if it is:
  - (1) Based on information about the candidate’s or committee’s campaign needs or plans provided to the expending person by the candidate, committee, or agents thereof; or
  - (2) Made by or through any agent of the candidate or committee in the course of their involvement in the current campaign.
- (c) An expenditure is not made at the behest of a candidate or committee merely when
  - (1) a person interviews a candidate on issues affecting the expending person, provided that prior to making a subsequent expenditure, that person has not communicated with the candidate or the candidate’s agents concerning the expenditure; or
  - (2) The expending person has obtained a photograph, biography, position paper, press release, or similar material from the candidate or the candidate’s agents.

The new regulation 18225.7 provides fuller and more objective rules for determining when expenditures are “coordinated.” However, greater precision comes at a price, and the revised

regulation refers only to expenditures coordinated with *candidates* and their agents. In the past, when the Act did not contain contribution limits, regulation 18225.7 provided guidance in characterizing expenditures for reporting purposes. With the advent of contribution limits under Proposition 34, the distinction between coordinated and uncoordinated expenditures became more significant. But the new contribution limits apply only to candidates and political party committees, not to “independent expenditure,” “major donor,” “general purpose,” or “recipient” committees not controlled by candidates.<sup>1</sup> The revised version of regulation 18225.7 is limited to expenditures coordinated with candidates, the most critical area of concern after Proposition 34, and the normal focus of “coordination” regulations in other jurisdictions with contribution limits.

If the Commission adopts regulation 18225.7 as recommended by staff, it will thereby repeal the only existing regulation arguably applicable to coordinated expenditures among committees which do not include expenditures coordinated with candidates. The Technical Assistance Division is concerned by the loss of a codified basis for their advice to committees wishing to know how to report expenditures coordinated with persons other than candidates. Responsive to this concern, staff has drafted emergency regulation 18225.8.

### Discussion

On its face, the challenge is a simple one, and a regulation extending the coordination rules of regulation 18225.7 to committees would do nothing more than maintain a current practice. But under the Act as it stands after Proposition 34, there are different legal interests in regulating expenditures coordinated with candidates on the one hand, and with “committees” on the other. New rules justifiable to ensure compliance with contribution limits, for example, may be less simple to justify when expenditures are coordinated between and among persons who are not subject to contribution limits. More important, perhaps, is the specificity of the rules included in the revised version of regulation 18225.7(c) and (d). These rules were developed with an eye to practices generally found in *candidate* elections, which do not fully reflect practices current among committees coordinating with each other towards various goals that may or may not include election of candidates.

A particular difficulty with a draft version of emergency regulation 18225.8 surfaced at the Interested Persons meeting conducted by staff on August 8, 2002. The discussion of this problem illustrated quite well the practical distinctions between expenditures coordinated with a candidate, and expenditures coordinated between or among committees. In the former case, the purpose of an expenditure is almost always election of the candidate.<sup>2</sup> In the latter case, however, there is *no* such

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<sup>1</sup> There is one important proviso to this statement. Section 85303 imposes a \$5,000 calendar year contribution limit on committees when the contribution is made “for the purpose of making contributions to candidates for elective state office.”

<sup>2</sup> There are exceptions to this general rule, such as “co-sponsored events” coordinated with candidates for charitable purposes, as recognized in § 82015 but these exceptions, expressly recognized as such, simply “prove” the rule.

typical purpose. This circumstance leads to anomalies when the rule for inter-committee coordination is based on a model developed to regulate coordination with candidates. For example, if PAC “A” directs PAC “B” to make an expenditure on behalf of a committee primarily formed to support a ballot measure, regulation 18225.7 would require that the contribution be reported as a contribution to PAC “A,” *not* to the ballot measure committee. Large sums given to the ballot measure committee would go unreported.

Interested persons provided other examples of coordination among committees where regulation 18225.7(c) or (d) would at least arguably require a conclusion that the resulting expenditures amounted to contributions by each committee to each of the other committees, in defiance of any commonsense evaluation of the committees’ activities under the circumstances. The fact that committees make (and may coordinate) expenditures for many purposes other than the straight-forward election of a candidate means that a regulation specifying activities that constitute coordination among committees, and providing that the expenditure is a contribution to a particular committee, must take into account a wide variety of circumstances and purposes if the desired result is to identify the recipient of a contribution in a manner that makes sense under the circumstances.

In summary, a regulation treating expenditures coordinated *only* between committees cannot simply duplicate rules specifically designed to govern expenditures coordinated with candidates.

### **Recommendation**

Staff recommends adoption of the proposed regulation 18225.7, but does *not* recommend that the entirety of that regulation be extended to govern expenditures coordinated solely by and among committees. The concerns of the Technical Assistance Division are real and substantial, but they can be met by a regulation like proposed regulation 18225.8, which states a rule similar to that of subdivision (b) of regulation 18225.7, without reference to the more specific rules contained in subdivisions (c) and (d). A regulation like proposed regulation 18225.8 would leave intact the rule that has governed coordinated expenditures among committees, without forcing the anomalous outcomes that result from application of the rules given at subdivisions (c) and (d) of the proposed candidate regulation. If the Commission repeals the current version of regulation 18225.7 in order to replace it with updated provisions focused on candidates, emergency adoption of regulation 18225.8 ensures that guidance is available for coordinated expenditures *not* involving candidates for the November elections.

Adoption of this regulation does not preclude further refinement in the future to add language addressing with particularity coordination arising out of activities unique to ballot measure or other committees.

Attachments: Emergency Regulation 18225.8